



National Hispanic
Media Coalition

Submitted via Email
FOIA-Appeal@fcc.gov
Federal Communications Commission
Office of General Counsel
445 12th Street, S.W.
Washington, D.C. 20554

November 14, 2017

APPLICATION FOR REVIEW OF INITIAL ACTION RE: NHMC FOIA REQUESTS

To Whom It May Concern:

Pursuant to 47 C.F.R. § 0.461(j), the National Hispanic Media Coalition (NHMC) applies for review by the Office of General Counsel of the Federal Communications Commission's (FCC) action in response to NHMC's May 2017 requests under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. NHMC is seeking review of the FCC's September 14, 2017 letter stating that its production of that date is its "final production of documents" in response to NHMC's FOIA requests.¹

I. Background

NHMC submitted four FOIA requests on May 1 through May 17, 2017 (to which the FCC assigned FOIA Control Nos. 17-565, 17-577, 17-638, and 17-639) seeking records regarding the FCC's enforcement of the *2015 Open Internet Order, In re Protecting and Promoting the Open Internet*, GN Docket No. 14-28 (Mar. 12, 2015), FCC 15-24 that went into effect on June 12, 2015.² These FOIA requests asked for all informal Net Neutrality/Open Internet consumer complaints filed with the FCC under the *2015 Open Internet Order*, as well additional related materials.

¹ The FCC September 14, 2017 transmittal email and letter are included as Attachment 1. The email from Kristine Fargotstein to NHMC states that attached to the email are "the final production of documents . . . and a letter formally responding to your request."

² These FOIA requests are included as Attachment 2.

The FCC's first production occurred on June 21, 2017. The production consisted of a sample of 1,000 consumer complaints, as well as data related to all the consumer complaints in the Commission's possession. The Commission's Consumer & Governmental Affairs Bureau (CGB) also indicated that it would produce 1,500 ombudsperson emails and 308 carrier responses associated with the 1,000 consumer complaints, but it failed to give a specific timeline for doing so.³ On June 26, 2017, NHMC wrote to the FOIA Public Liaison at the Commission stating that the initial production did not adequately respond to its FOIA requests.⁴

On July 14, 2017, CGB returned to NHMC with another offer: it would produce the 1,500 ombudsperson emails, an additional 2,000 informal consumer complaints with 900 pages of associated carrier responses, and additional spreadsheets containing data pertaining to all documents responsive to NHMC's FOIA requests.⁵ NHMC responded by letter on July 27, 2017, accepting the CGB's offer *only with regard to the 1,500 ombudsperson emails*.⁶ In that letter, NHMC reiterated that regarding consumer complaints, it expected the Commission to produce "the text of the more than 47,000 open Internet-related complaints"; "spreadsheet[s] with data for the more than 47,000 consumer complaints"; and the carrier responses to those complaints, including "attachments uploaded by consumers."⁷ By this letter, NHMC did not modify or narrow the scope of its FOIA requests, aside from agreeing to the Commission's July 14, 2017 offer "as it relates to the 1,500 ombudsperson documents."⁸ NHMC specifically reserved its rights to appeal the FCC's FOIA production.⁹

³ The Commission's June 20, 2017 transmission letter is included as Attachment 3. Although the letter is dated June 20, 2017, NHMC did not receive emails with attachments until the next day on June 21, 2017.

⁴ The letter, included as Attachment 4, addressed NHMC's concerns that the sample of 1,000 consumer complaints was inadequate; that the spreadsheet of data provided was incomplete; and that the Commission had provided no timeline for the production of the carrier responses and ombudsperson documents. Among other requests, the letter emphasized that the Commission should "honor the May 1, 2017 FOIA Request 2017-565 for all informal Open Internet/Net Neutrality complaints and provide a time frame for when these documents will be produced."

⁵ The July 14, 2017 CGB email is included as Attachment 5.

⁶ The July 27, 2017 NHMC letter is included as Attachment 6.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

NHMC had several interactions with the Commission regarding the scope of the production.¹⁰ During this time, NHMC reiterated its request for all 18,000 carrier responses, the attachments included with consumer complaints, and information regarding the resolution of these complaints.¹¹ Several weeks passed and NHMC did not receive a response from the FCC, despite several emails and letters. On August 18, 2017 Carmen Scurato received a call from the Commission stating that they had started the process of producing all consumer complaints. Ms. Scurato followed up on August 21, 2017 to confirm the call as well as follow-up on questions that were not answered.¹²

The FCC transmitted approximately 70,000 pages of documents to NHMC in response to its FOIA requests in June, August, and September 2017, and NHMC received FCC's final production on September 14, 2017.¹³ The letter accompanying the final production explained that the Commission redacted records responsive to NHMC's requests under FOIA Exemptions 5 and 6,¹⁴ and that "[t]he redacted materials include internal discussions of how to respond to a broadband consumer's inquiry sent to the ombudsperson and drafts of a blog post published by the ombudsperson."¹⁵ The letter also stated that "[i]f you consider this to be a denial of your FOIA request, you may seek review by filing an application for review with the Office of General Counsel."¹⁶ At no time between the August 21, 2017 email and the final production on September 14, 2017 did NHMC receive a response to the questions in the email, which clearly set forth NHMC's expectations regarding the production. To date, that email is still unanswered.

¹⁰ See, e.g., *In re Restoring Internet Freedom*, WC Docket No. 17-108, NHMC Ex Parte Commissioner Clyburn (filed Aug. 11, 2017) (NHMC Ex Parte Commissioner Clyburn); *In re Restoring Internet Freedom*, WC Docket No. 17-108, NHMC Status Update Letter (filed Aug. 10, 2017); *In re Restoring Internet Freedom*, WC Docket No. 17-108, NHMC Ex Parte Commissioner Carr (filed Aug. 22, 2017) (NHMC Ex Parte Commissioner Carr). In addition, NHMC left a voicemail with Mike Hennigan, CGB, on August 9, 2017 and with Kristine Fargotstein, Office of General Counsel, on August 18, 2017, and NHMC spoke with Kristine Fargotstein on August 18, 2017.

¹¹ See, e.g., email from Carmen Scurato, NHMC to Kristine Fargotstein, Office of General Counsel (Aug. 21, 2017) (Attachment 7). The email remains unanswered.

¹² *Id.*

¹³ Attachment 1.

¹⁴ See 5 U.S.C. § 552(b)(5), (6) (shielding from disclosure "intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency" as well as "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.")

¹⁵ See Attachment 1.

¹⁶ *Id.*

NHMC considers the September 14, 2017 letter to be partial denial of its FOIA requests. NHMC does not dispute the application of FOIA Exemptions 5 and 6 as described in the letter. However, the FCC's production of documents does not include a large portion of the documents listed in NHMC's May 2017 FOIA requests. As is clear from the July 27, 2017 letter and the August 21, 2017 email NHMC sent the Commission, NHMC did not agree to this limited production.¹⁷ NHMC has received no explanation from the Commission as to whether these documents do not exist or whether they were withheld, and, if so, for what reason.

Specifically, the Commission's production of documents does not include (and does not explain the reason for not including) the following documents:

1. Carrier responses. In its May 1, 2017 FOIA request, NHMC asked for the "[r]esolution[s] of complaint[s], including provider's response letters."¹⁸ Subsequently, on July 14, 2017, CGB indicated in email correspondence that the Commission possessed over 18,000 carrier responses to the informal Net Neutrality/Open Internet complaints submitted to the FCC since June 2015.¹⁹ To date, the Commission has produced only 823 pages of carrier responses. NHMC again reiterates its request for *all* carrier responses. These responses should be produced by sub-issue, to mirror the production format used for the informal complaints.
2. Attachments included with consumer complaints. NHMC's May 1, 2017 FOIA request for all informal Open Internet/Net Neutrality complaints filed with the FCC under the *2015 Open Internet Order* specifically requested, "[a]ny attachments included with the filer's complaint."²⁰ When consumers fill out the FCC's online consumer complaint Center form, there is an option to attach supporting documents. The attachments are needed in order to contextualize the breadth of a consumer's interaction with their ISP. NHMC again requests all missing attachments to the consumer complaints, and that such documents be produced in a manner that can be cross-referenced with the Commission's earlier productions.

¹⁷ See Attachments 6, 7.

¹⁸ Attachment 2.

¹⁹ See email from Mike Hennigan, CGB to Carmen Scurato, NHMC (July 14, 2017) (Attachment 5). NHMC reiterated its request for all 18,000 carrier responses in correspondence with the General Counsel's office on August 21, 2017. See email from Carmen Scurato, NHMC to Kristine Fargotstein, Office of General Counsel (Aug. 21, 2017) (Attachment 7).

²⁰ Attachment 2. NHMC reiterated its request for these attachments in its August 21, 2017 correspondence with the General Counsel's office. See Attachment 7.

3. Consumer rebuttals to carrier responses. NHMC requested all rebuttals associated with Net Neutrality/Open Internet consumer complaints, as well as any attachments or supplemental materials provided by consumers in the rebuttals. These rebuttals should be produced as responsive to NHMC's May 1, 2017 FOIA request for the "[r]esolution[s] of complaint[s]" and/or responsive to NHMC's May 5, 2017 FOIA request for "[a]ll documents, information, and communications related to informal complaints submitted to the FCC since June 2015 for internet complaints relating to" speed issues, interference issues, and privacy.²¹
4. Complaint Resolution Data. The Commission provided NHMC with ten "enhanced" Excel spreadsheets with additional non-public information, such as carrier and Internet sub-issues (e.g., blocking, throttling, etc.). However, one column was left blank across all spreadsheets titled "Resolution." NHMC's May 1, 2017 FOIA request specifically asked for the resolution of each of those complaints. The missing information that NHMC requested should have been provided in the "Resolution" column of the excel spreadsheets.
5. Ombudsperson emails dating from January 2017. NHMC's May 1, 2017 FOIA request asked for "[a]ll records, including but not limited to emails, phone calls, handwritten or typed notes, and calendar invites since June 2015 indicating when consumers, businesses, and other organizations' *sought guidance* from the ombudsperson" (emphasis added).²² The Chairman has not appointed an Open Internet ombudsperson since the previous ombudsperson stepped down in early January 2017, yet consumers still have the option of reaching out to the Commission via the ombudsperson@fcc.gov address. NHMC is missing emails received to that address and any responses, guidance, or resolutions provided to consumers since the ombudsperson position has remained vacant.
6. Attachments to ombudsperson emails dating from June 2015. NHMC received emails from the ombudsperson in response to the May 1, 2017 FOIA request. Missing from the emails are all attachments. NHMC requests that the FCC complete the original production by providing all missing attachments.
7. CGB Records. NHMC's May 17, 2017 FOIA request asked for "[a]ll documents, information, communications, and guidance used by the Consumer and Governmental Affairs Bureau to resolve internet complaints received either by phone or online since

²¹ Attachment 2. NHMC also made clear in its August 21, 2017 correspondence with the General Counsel's office that it expected any consumer rebuttals in the Commission's possession to be produced as documents responsive to its FOIA requests. *See* Attachment 7.

²² Attachment 2.

June 2015.”²³ The Commission has not produced the requested documents, nor has it indicated whether these documents exist, or whether they are being withheld under a FOIA exemption.

II. The Commission’s initial action improperly withheld requested documents without explanations.

If the Commission has determined that it will not produce documents, it must communicate that fact to the requester, along with the basis for its decision to withhold. *See Citizens for Responsibility and Ethics in Washington v. FCC*, 711 F.3d 180, 188 (D.C. Cir. 2013) (explaining that in order to make a “determination” under 5 U.S.C. § 552(a)(6)(A)(i) the agency must “gather and review the documents” as well as “determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents,” in addition to other requirements); *Comptel v. FCC*, 910 F. Supp. 2d 100, 111 (D.D.C. 2012) (explaining that the agency bears the burden in litigation to justify withholding any records given that it possesses the requested information and decides whether it should be withheld or disclosed) (citing 5 U.S.C. § 552(a)(4)); *see also* 5 U.S.C. § 552(a)(6)(F) (“[i]n denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied”).

NHMC has explicitly requested disclosure of this information in its May 2017 FOIA requests, in the pending *Internet NPRM* proceedings,²⁴ and in *ex parte* communications with the offices of all five Commissioners as well as the Wireline Competition Bureau and the Office of General Counsel.²⁵ The information would provide significant insight into the FCC’s enforcement of the *2015 Open Internet Order*, and whether and to what extent the current rules are needed to protect

²³ *Id.*

²⁴ *See In re Restoring Internet Freedom*, WC Docket No. 17-108, Motion for Extension of Time, (filed July 7, 2017); *In re Restoring Internet Freedom*, WC Docket No. 17-108, Joint Motion To Make Informal Open Internet Complaint Documents Part of the Record and To Set a Pleading Cycle For Comment on Them (filed Sept. 18, 2017); *In re Restoring Internet Freedom*, WC Docket No. 17-108, Joint Reply of National Hispanic Media Coalition et al. (filed Oct. 5, 2017).

²⁵ *See* NHMC Ex Parte Commissioner Clyburn; NHMC Ex Parte Commissioner Carr; *In re Restoring Internet Freedom*, WC Docket No. 17-108, NHMC Ex Parte Commissioner Rosenworcel (filed Sept. 5, 2017); *In re Restoring Internet Freedom*, WC Docket No. 17-108, NHMC Ex Parte Travis Litman (filed Oct. 13, 2017); *In re Restoring Internet Freedom*, WC Docket No. 17-108, NHMC Ex Parte Claude Aiken (filed Oct. 13, 2017); *In re Restoring Internet Freedom*, WC Docket No. 17-108, NHMC Ex Parte Jamie Susskind (filed Oct. 13, 2017); *In re Restoring Internet Freedom*, WC Docket No. 17-108, NHMC Ex Parte Wireline Competition Bureau and Office of the General Counsel (filed Oct. 13, 2017); *In re Restoring Internet Freedom*, WC Docket No. 17-108, NHMC Ex Parte Amy Bender (filed Oct. 23, 2017); *In re Restoring Internet Freedom*, WC Docket No. 17-108, NHMC Ex Parte Jay Schwarz (filed Nov. 1, 2017).

consumers. The information NHMC has requested must be produced expeditiously to adequately answer questions posed in the FCC's Notice of Proposed Rulemaking, WC Docket No. 17-108. While the Commission has provided some of the requested information, NHMC has received no explanation for why other documents have not been produced. The Commission's September 14, 2017 letter is incorrect in stating that NHMC's July 27, 2017 letter "modified" its requests and "accept[ed] the FCC's offer to provide" only: (1) "1,500 emails from ombudsperson(s) Parul Desai and Michael Janson"; (2) "more than 47,000 consumer complaints"; (3) "the spreadsheet with data for the more than 47,000 consumer complaints"; and (4) "the 308 carrier responses that relate to the initial production of 1,000 consumer complaints."²⁶ Although NHMC accepted the FCC's offer regarding the ombudsperson documents, it did not agree to otherwise limit the scope of its original requests. The Commission must either provide these documents or explain the basis for its decision to withhold them.

Thank you for your consideration of this application for review.


Respectfully submitted,

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Attorneys for
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²⁶ Attachment 1.

ATTACHMENT 1

From: Kristine Fargotstein Kristine.Fargotstein@fcc.gov 
Subject: FOIA Requests 2017-565, 577, & 568 (1 of 6)
Date: September 14, 2017 at 2:20 PM
To: Carmen Scurato cscurato@nhmc.org

KF

Ms. Scurato,

Attached please find the final production of documents in response to your Freedom of Information (FOIA) request, FOIA Control Nos. 2017-565, 2017-577, and 2017-568, and a letter formally responding to your request. This production includes 26,159 pages of consumer complaints and 83 pages of carrier responses. This comes to a total of 69,465 pages of documents provided, including the 1,500 ombudsperson emails and Excel spreadsheets.

Please be advised that the FCC receives many complaints and comments that do not involve violations of the Communications Act or any FCC rule or order. Thus, the existence of a complaint or comment filed against a particular carrier or business entity does not necessarily indicate any wrongdoing by any individuals or business entities named in the complaint or comment. The attached documents represent information provided by the public that has not been verified by the FCC.

Due to file size, the responsive documents for this production of documents will be sent over six separate e-mails. This is e-mail one of six.

Best,

Kristine Fargotstein
Special Counsel
Office of General Counsel
Federal Communications Commission
(202) 418-2774



FOIA 2017-565
577 63...er.docx



Federal Communications Commission
Washington, D.C. 20554

September 14, 2017

Carmen Scurato
National Hispanic Media Coalition
Washington, DC Office
718 7th Street NW
Washington, DC 20001
Via e-mail to cscurato@nhmc.org

Re: FOIA Control Nos. 2017-565, 2017-577, and 2017-638

Ms. Scurato:

This letter responds to your Freedom of Information Act (FOIA) requests for “all documents, information, and communications related to informal complaints submitted to the FCC since June 2015 under the category of Open Internet/Net Neutrality, for all sub-issues such as blocking, data caps, inaccurate disclosures/transparency, throttling, and other;” “for Internet complaints relating to speed issues, including all sub-issues such as inconsistent speed, less than advertised speed, and other;” “for Internet complaints relating to interference issues, including all sub-issues such as jamming/blocking (including Wi-Fi), and other;” and “for Internet complaints relating to privacy.” These requests also asked for “all formal complaints filed since June 2015 under 47 C.F.R. § 8.12” and all records “indicating when consumers, businesses, and other organizations’ sought guidance from the ombudsperson [or] from the Consumer and Governmental Affairs Bureau (CGB).” These requests were dated May 1, 2017; May 5, 2017; and May 17, 2017, and assigned FOIA Control Nos. 17-565, 17-577, and 17-638 respectively. These requests were modified by your letter from July 27, 2017, accepting the FCC’s offer to provide the following documents:

- “1,500 emails from ombudsperson(s) Parul Desai and Michael Janson”;
- “more than 47,000 consumer complaints”;
- “the spreadsheet with data for the more than 47,000 consumer complaints”; and
- “the 308 carrier responses that relate to the initial production of 1,000 consumer complaints”

Pursuant to section 0.461(g)(1)(i) of the Commission’s rules and the need to examine such a voluminous amount of records in order to redact consumer’s personal and sensitive information, the date for responding to your full request has been extended from September 1, 2017, to provide the documents on a rolling basis on June 20, August 24, August 29, September 5, and September 14.

The Consumer and Governmental Affairs Bureau, along with the Wireline Competition Bureau and Office of General Counsel, located nearly 70,000 pages of records responsive to your request. A team of thirty-two employees from across the Commission spent 1,017 hours redacting consumer’s personal and sensitive material on the pages produced due to the reasons discussed below.

Records responsive to your request were redacted under FOIA Exemption 6.¹ Exemption 6 protects “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” The information redacted included the names, contact information, account numbers, and other sensitive personal information of parties that filed complaints or otherwise contacted the Commission. Balancing the public’s right to disclosure against the individual’s right to privacy, we have determined that release of this information would constitute a clearly unwarranted invasion of personal privacy by revealing the personal information of complainants.

We have determined that it is reasonably foreseeable that disclosure would harm the privacy interest of the persons at the Commission, which Exemption 6 is intended to protect.

Additionally, records responsive to your request were also redacted under FOIA Exemption 5.² Exemption 5 protects certain inter-agency and intra-agency records that are normally considered privileged in the civil discovery context. Exemption 5 encompasses a deliberative process privilege intended to “prevent injury to the quality of agency decisions.”³ To fall within the scope of this privilege the agency records must be both predecisional and deliberative.⁴ Predecisional records must have been “prepared in order to assist an agency decision maker in arriving at his decision.”⁵ Deliberative records must be such that their disclosure “would expose an agency’s decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency’s ability to perform its functions.”⁶

The redacted materials include internal discussions of how to respond to a broadband consumer’s inquiry sent to the ombudsperson and drafts of a blog post published by the ombudsperson. We have determined that it is reasonably foreseeable that disclosure would harm the Commission’s deliberative processes, which Exemption 5 is intended to protect. Release of this information would chill deliberations within the Commission and impede the candid exchange of ideas.

The FOIA requires that “any reasonably segregable portion of a record” must be released after appropriate application of the Act’s exemptions.⁷ The statutory standard requires the release of any portion of a record that is nonexempt and that is “reasonably segregable” from the exempt portion. However, when nonexempt information is “inextricably intertwined” with exempt information, reasonable segregation is not possible.⁸ The redactions and/or withholdings made

¹ 5 U.S.C. § 552(b)(6).

² 5 U.S.C. § 552(b)(5).

³ *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 151 (1975).

⁴ *Id.* at 151-52.

⁵ *Formaldehyde Inst. v. Dep’t of Health and Human Servs.*, 889 F.2d 1118, 1122 (D.C. Cir. 1989); *see also Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980) (“In deciding whether a document should be protected by the privilege we look to whether the document is . . . generated before the adoption of an agency policy and whether . . . it reflects the give-and-take of the consultative process. The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents. . .”).

⁶ *Formaldehyde Inst.*, 889 F.2d at 1122 (quoting *Dudman Commc’ns Corp. v. Dep’t of the Air Force*, 815 F.2d 1565, 1568 (D.C. Cir. 1987)).

⁷ 5 U.S.C. § 552(b) (sentence immediately following exemptions).

⁸ *Mead Data Cent. Inc. v. Dep’t of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977).

are consistent with our responsibility to determine if any segregable portions can be released. To the extent non-exempt material is not released, it is inextricably intertwined with exempt material.

We are required by both the FOIA and the Commission's own rules to charge requesters certain fees associated with the costs of searching for, reviewing, and duplicating the sought after information.⁹ To calculate the appropriate fee, requesters are classified as: (1) commercial use requesters; (2) educational requesters, non-commercial scientific organizations, or representatives of the news media; or (3) all other requesters.¹⁰

Pursuant to section 0.466(a)(5)-(7) of the Commission's rules, you have been classified as category (2), "educational requesters, non-commercial scientific organizations, or representatives of the news media."¹¹ As an "educational requester, non-commercial scientific organization, or representative of the news media," the Commission assesses charges to recover the cost of reproducing the records requested, excluding the cost of reproducing the first 100 pages. As we are producing the records electronically, you will not be billed for any document reproduction.

You have requested a fee waiver pursuant to section 0.470(e) of the Commission's rules.¹² As you are not required to pay any fees in relation to your FOIA request, the Office of the General Counsel, which reviews such requests, does not make a determination on your request for a fee waiver.¹³

If you consider this to be a denial of your FOIA request, you may seek review by filing an application for review with the Office of General Counsel. An application for review must be *received* by the Commission within 90 calendar days of the date of this letter.¹⁴ You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 445 12th St SW, Washington, DC 20554, or you may file your application for review electronically by e-mailing it to FOIA-Appeal@fcc.gov. Please caption the envelope (or subject line, if via e-mail) and the application itself as "Review of Freedom of Information Action."

If you would like to discuss this response before filing an application for review to attempt to resolve your dispute without going through the appeals process, you may contact the Commission's FOIA Public Liaison for assistance at:

FOIA Public Liaison
Federal Communications Commission, Office of the Managing Director, Performance
Evaluation and Records Management
445 12th St SW, Washington, DC 20554
202-418-0440
FOIA-Public-Liaison@fcc.gov

⁹ See 5 U.S.C. § 552(a)(4)(A), 47 C.F.R. § 0.470.

¹⁰ 47 C.F.R. § 0.470.

¹¹ 47 C.F.R. § 0.466(a)(5)-(7).

¹² 47 C.F.R. § 0.470(e).

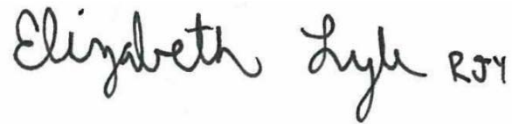
¹³ 47 C.F.R. § 0.470(e)(5).

¹⁴ 47 C.F.R. §§ 0.461(j), 1.115; 47 C.F.R. § 1.7 (documents are considered filed with the Commission upon their receipt at the location designated by the Commission).

If you are unable to resolve your FOIA dispute through the Commission's FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740-6001
202-741-5770
877-684-6448
ogis@nara.gov
ogis.archives.gov

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Lyle" followed by a stylized monogram or initials "RL" to the right.

Elizabeth Lyle
Assistant General Counsel

Enclosures
cc: FCC FOIA Office

ATTACHMENT 2



National Hispanic
Media Coalition

Submitted via FOIA Online
<https://foiaonline.regulations.gov>

May 1, 2017

Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554

FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

This letter is a request from the National Hispanic Media Coalition (NHMC) under the Freedom of Information Act (FOIA) 5 U.S.C. § 522, implemented as 47 C.F.R. § 0.461, to the Federal Communications Commission (FCC).

NHMC seeks records regarding the FCC's enforcement of the 2015 *Open Internet Order*, GN Docket No. 14-28, FCC-15-24 (Rel. Mar. 12, 2015) that went into effect on June 12, 2015.

Documents Requested:

- **(1)** All formal complaints filed since June 2015 under 47 C.F.R. § 8.12.
- **(2)** All documents, information, and communications related to informal complaints submitted to the FCC since June 2015 under the category of Open Internet/Net Neutrality, for all sub-issues such as blocking, data caps, inaccurate disclosures/transparency, throttling, and other. NHMC seeks the following information for each informal complaint:
 - (a) Date of complaint
 - (b) City and State of filer
 - (c) Subject of complaint
 - (d) Description of complaint
 - (e) Internet method (i.e., Wireless, Cable, Satellite, DSL, Fiber)
 - (f) Company Name
 - (g) Filer's relationship to company
 - (h) Whether filer contacted company about the issue
 - (i) Whether filer submitted complaint on behalf of someone else
 - (j) Any attachments included with the filer's complaint
 - (k) Resolution of complaint, including provider's response letters

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Washington, DC Office | 718 7th St NW | Washington, DC 20001 | 202 596 2063

- **(3)** All records, including but not limited to emails, phone calls, handwritten or typed notes, and calendar invites since June 2015 indicating when consumers, businesses, and other organizations' sought guidance from the ombudsperson.
- **(4)** All records, including but not limited to emails, phone calls, handwritten or typed notes, and calendar invites since June 2015 indicating when consumers, businesses, and other organizations' sought guidance from the Consumer and Governmental Affairs Bureau (CGB).

NHMC seeks disclosure of the above requested documents because the documents will "contribute significantly to public understanding of the operations or activities of the government," and all duplication fees should be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). NHMC also asserts that these "records are not sought for commercial use." 5 U.S.C. § 552(a)(4)(A)(ii)(I). Further, disclosure of this information would provide significant insight into the FCC's enforcement of the 2015 *Open Internet Order*, and whether consumers utilize the current rules to address and remedy provider violations of the bright-line rules of no blocking, no throttling, no paid prioritization, as well as the transparency rule.

Thank you for your consideration of this request.

Respectfully submitted,

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Washington, D.C. 20554

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NHMC seeks records regarding the FCC's enforcement of the 2015 *Open Internet Order*, GN Docket No. 14-28, FCC-15-24 (Rel. Mar. 12, 2015) that went into effect on June 12, 2015.

Documents Requested:

- **(1)** All documents, information, and communications related to informal complaints submitted to the FCC since June 2015 for internet complaints relating to speed issues, including all sub-issues such inconsistent speed, less than advertised speed, and other.
- **(2)** All documents, information, and communications related to informal complaints submitted to the FCC since June 2015 for internet complaints relating to interference issues, including all sub-issues such jamming/blocking (including Wi-Fi), and other.
- **(3)** All documents, information, and communications related to informal complaints submitted to the FCC since June 2015 for Internet complaints relating to privacy, whether or not the individual had their personal information been accessed, obtained or used by an unauthorized person.

NHMC seeks the following information for each informal complaint:

- (a) Date of complaint
- (b) City and State of filer
- (c) Subject of complaint
- (d) Description of complaint
- (e) Internet method (i.e., Wireless, Cable, Satellite, DSL, Fiber)
- (f) Company Name
- (g) Filer's relationship to company
- (h) Whether filer contacted company about the issue
- (i) Whether filer submitted complaint on behalf of someone else
- (j) Any attachments included with the filer's complaint
- (k) Resolution of complaint, including provider's response letters

NHMC seeks disclosure of the above requested documents because the documents will "contribute significantly to public understanding of the operations or activities of the government," and all duplication fees should be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). NHMC also asserts that these "records are not sought for commercial use." 5 U.S.C. § 552(a)(4)(A)(ii)(I). Further, disclosure of this information would provide significant insight into the FCC's enforcement of the 2015 *Open Internet Order*, and whether consumers utilize the current rules to address and remedy provider violations of the bright-line rules of no blocking, no throttling, no paid prioritization, as well as the transparency rule.

Thank you for your consideration of this request.

Respectfully submitted,

Carmen Scurato, Esq.
Director, Policy & Legal Affairs
National Hispanic Media Coalition
718 7th Street NW
Washington, DC 20001
(202) 596-8997
cscurato@nhmc.org



National Hispanic
Media Coalition

Submitted via FOIA Online
<https://foiaonline.regulations.gov>

May 17, 2017

Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554

FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

This letter is a request from the National Hispanic Media Coalition (NHMC) under the Freedom of Information Act (FOIA) 5 U.S.C. § 522, implemented as 47 C.F.R. § 0.461, to the Federal Communications Commission (FCC).

NHMC seeks records regarding the FCC's enforcement of the 2015 *Open Internet Order*, GN Docket No. 14-28, FCC-15-24 (Rel. Mar. 12, 2015) that went into effect on June 12, 2015.

Documents Requested:

- All documents, information, and communications related to informal internet billing complaints submitted to the FCC since June 2015. NHMC seeks the following information for each informal complaint:
 - (a) Date of complaint
 - (b) City and State of filer
 - (c) Subject of complaint
 - (d) Description of complaint
 - (e) Internet method (i.e., Wireless, Cable, Satellite, DSL, Fiber)
 - (f) Company Name
 - (g) Filer's relationship to company
 - (h) Whether filer contacted company about the issue
 - (i) Whether filer submitted complaint on behalf of someone else
 - (j) Any attachments included with the filer's complaint
 - (k) Resolution of complaint, including provider's response letters

May 17, 2017

NHMC FOIA Request

NHMC seeks disclosure of the above requested documents because the documents will “contribute significantly to public understanding of the operations or activities of the government,” and all duplication fees should be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). NHMC also asserts that these “records are not sought for commercial use.” 5 U.S.C. § 552(a)(4)(A)(ii)(I). Further, disclosure of this information would provide significant insight into the FCC’s enforcement of the 2015 *Open Internet Order*, and whether consumers utilize the current rules to address and remedy potential violations.

Thank you for your consideration of this request.

Respectfully submitted,

Carmen Scurato, Esq.
Director, Policy & Legal Affairs
National Hispanic Media Coalition
718 7th Street NW
Washington, DC 20001
(202) 596-8997
cscurato@nhmc.org



National Hispanic
Media Coalition

Submitted via FOIA Online
<https://foiaonline.regulations.gov>

May 17, 2017

Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554

FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

This letter is a request from the National Hispanic Media Coalition (NHMC) under the Freedom of Information Act (FOIA) 5 U.S.C. § 522, implemented as 47 C.F.R. § 0.461, to the Federal Communications Commission (FCC).

NHMC seeks records regarding the FCC's enforcement of the 2015 *Open Internet Order*, GN Docket No. 14-28, FCC-15-24 (Rel. Mar. 12, 2015) that went into effect on June 12, 2015.

Documents Requested:

- **(1)** All documents, information, communications, and guidance used by the Consumer and Governmental Affairs Bureau to resolve internet complaints received either by phone or online since June 2015.
- **(2)** All documents, information, communications, and guidance used by the Enforcement Bureau to resolve internet complaints received either by phone or online since June 2015.

May 17, 2017

NHMC FOIA Request

NHMC seeks disclosure of the above requested documents because the documents will “contribute significantly to public understanding of the operations or activities of the government,” and all duplication fees should be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). NHMC also asserts that these “records are not sought for commercial use.” 5 U.S.C. § 552(a)(4)(A)(ii)(I). Further, disclosure of this information would provide significant insight into the FCC’s enforcement of the 2015 *Open Internet Order*, and whether consumers utilize the current rules to address and remedy potential violations.

Thank you for your consideration of this request.

Respectfully submitted,

Carmen Scurato, Esq.
Director, Policy & Legal Affairs
National Hispanic Media Coalition
718 7th Street NW
Washington, DC 20001
(202) 596-8997
cscurato@nhmc.org

ATTACHMENT 3



Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D.C. 20554



June 20, 2017

Carmen Scurato
National Hispanic Media Coalition
cscurato@nhmc.org

FOIA Nos. 2017-565, 2017-577, 2017-638 & 2017-639

Dear Ms. Scurato:

This letter responds to your recent Freedom of Information Act ("FOIA") requests received by the Federal Communications Commission (FCC or Commission) and assigned to the Consumer & Governmental Affairs ("CGB"), Enforcement ("EB") and Wireline Competition Bureaus ("WCB"). Among other things, you are requesting documents, information and communications regarding the "FCC's enforcement of the 2015 Open Internet Order, GN Docket No. 14-28, FCC-15-24 (Rel. Mar. 12, 2015) that went into effect on June 12, 2015." We are responding to your requests electronically. Pursuant to section 0.461(g)(1)(i) of the Commission's rules, the date for responding to your requests has been extended from May 31, 2017, to June 20, 2017, due to a need to search records from multiple offices of the Commission.

Please be advised that your four FOIA requests were aggregated for calculation of the FOIA fees. On May 22, 2017, via telephone, you spoke with Mike Hennigan of my staff regarding your requests and you were advised that our search located approximately 47,279 complaints related to "Open Internet." You advised Mr. Hennigan that you would be interesting in receiving the first 100 samplings of the complaints we located, per complaint category and complaints sub-categories for complaints filed in "2015, 2016 as well as 2017."

Therefore, CGB conducted a search of the databases in which we maintain the records of informal complaints filed by, or on behalf of, consumers. Our search revealed approximately 1000 complaints that are responsive to your request, which are attached. We have attached data you are requesting related to the approximately 47,279 complaints related to "Open Internet." Also, as you requested, our search revealed 308 pages of carrier responses and approximately 1,500 emails related to your request. WCB has advised us that they have potentially responsive documents which they are continuing to process, and will respond to your request as expeditiously as possible. EB informed CGB that a search of their records identified no responsive records.

Also, on May 22, 2017, you agreed that due to the volume of documents located and the number of hours involved in processing your request, we would provide you with responsive documents on a rolling basis in order to complete your request in the most efficient and timely manner possible. Please be advised that the FCC receives many complaints and comments that do not involve violations of the Communications Act or any FCC rule or order. Thus, the existence of a complaint or comment filed against a particular carrier or business entity does not necessarily indicate any wrongdoing by any individuals or business entities named in the complaint or comment. The attached complaints represents information provided by the public that has not been verified by the FCC.

Record responsive to your request were withheld or redacted under FOIA Exemption 6.¹ Exemption 6 protects files containing personally identifiable information disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Balancing the public's right to disclosure against the individual's right to privacy, we have determined that release of this information would constitute a clearly unwarranted invasion of personal privacy. Therefore, all FCC employee's names, complainant's addresses, and the complainant's telephone numbers were redacted under Exemption 6

FOIA and FCC rules require the FCC to charge requesters for time spent searching for and reviewing responsive documents, and for copying them." Pursuant to section 0.466(a)(5)-(7) of the Commission's rules, you have been classified as category (2), "educational requesters, non-commercial scientific organizations, or representatives of the news media."² As an "educational requester, non-commercial scientific organization, or representative of the news media," the Commission assesses charges to recover the cost of reproducing the records requested, excluding the cost of reproducing the first 100 pages. The production in response to your request is electronic, and did not involve any duplication. Therefore, you will not be charged any fees.

You have requested a fee waiver pursuant to section 0.047(e) of the Commission's rules.³ As you are not required to pay any fees in relation to your FOIA request, the Office of the General Counsel, which reviews such request, does not make a determination on your request for a fee waiver.

If you consider this to be a denial of your FOIA request, you may seek review by filing an application for review with the Office of General Counsel. An application for review must be *received* by the Commission within 90 calendar days of the date of this letter.⁴ You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 445 12th St SW, Washington, DC 20554, or you may file your application for review electronically by e-mailing it to FOIA-Appeal@fcc.gov. Please caption the envelope (or subject line, if via e-mail) and the application itself as "Review of Freedom of Information Action" and the application should refer to FOIA Nos. 2017-565, 2017-577, 2017-638 and 2017-639.

¹ 5 U.S.C. § 552(b)(6).

² 47 CFR § 0.466(a)(5)-(7).

³ 47 CFR § 0.470(e).

⁴ 47 CFR §§ 0.461(j), 1.115; 47 CFR § 1.7 (documents are considered filed with the Commission upon their receipt at the location designated by the Commission).

If you would like to discuss this response before filing an application for review to attempt to resolve your dispute without going through the appeals process, you may contact the Commission's FOIA Public Liaison for assistance at:

FOIA Public Liaison
FCC, Office of the Managing Director,
Performance Evaluation and Records Management
445 12th St SW,
Washington, DC 20554
FOIA-Public-Liaison@fcc.gov

If you are unable to resolve your FOIA dispute through the Commission's FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's Office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740-6001
202-741-5770
877-684-6448
ogis@nara.gov
ogis.archives.gov

Sincerely,



Nancy Stevenson
Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Attachments

ATTACHMENT 4



Submitted via Email
Stephanie.Kost@fcc.gov
FOIA Public Liaison
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

June 26, 2017

CONCERNS RE: RESPONSES TO NHMC's FOIA REQUEST FCC 2017-565

Dear Ms. Kost,

I write because I have several concerns about a FOIA request that I submitted to the Federal Communications Commission (FCC) on May 1, 2017, through the online portal at <https://foiaonline.regulations.gov>. The request was subsequently labeled FCC 2017-565.

My point of contact at the FCC throughout this request has been Mike Hennigan. In his first email I received May 22, 2017 Mr. Hennigan stated: "We are unable to process your requests as currently framed." This was of grave concern to me and I spoke with Mr. Hennigan on the phone to provide clarity regarding the information and documents I was seeking. Mr. Hennigan explained it would be impossible to provide all informal complaints within the time frame and suggested based on my request that he could provide "all the data" but then narrow a portion of my FOIA request to the first 100 samples of each category for other data points I requested, such as the description, attachments, and carrier/provider responses. I would like to be clear that I only agreed to this sample based on the premise that I would receive "all the data" - which I understood (and believed Mr. Hennigan did as well) as providing me with all the other non-private information requested for the all the informal Open Internet/Net Neutrality complaints.

To further clarify what I mean by "all the data" I did offer to send the attached spreadsheet to Mr. Hennigan, but he informed me that was not necessary since he understood my request. I am attaching the spreadsheet now so there is no further confusion. This was a spreadsheet I exported from the FCC's own Consumer Complaint Center data center on April 28, 2017, only a few days prior to submitting request 2017-565 on May 1, 2017. I also reviewed the Consumer Complaint [submission form](#) for "Internet" complaints, with the "Internet Issue" of "Open

Internet/Net Neutrality” complaints to see what data points consumers are asked. The data points were all captured in my FOIA Request. This form also provides the basis of what data points/information is not made publicly available on the [Consumer Complaint Data Center](#) - some which are necessary to withhold due to privacy concerns, yet other information is not private but remains off the public-facing data center. In my request to Mr. Hennigan for “all the data” I understood that I would receive a spreadsheet similar to the one I have attached to this email but with all the “not-private” fields populated. Instead, what I received was a spreadsheet with “totals” that cannot in anyway be cross-references with the information that is already publicly available.

If Mr. Hennigan had made it clear from our first discussion that such data would not be possible to produce, I would not had agreed to receiving “samples.” It is very clear from my most recent calls and emails with Mr. Hennigan that the only way to resolve this is to honor the initial request for all informal Open Internet/Net Neutrality complaints. I did send Mr. Hennigan an email this past Friday June 23, 2017 and he stated that I would need to file a new request in order to receive more informal complaints beyond the initial sample -- I disagree.

The FCC FOIA Office should honor the May 1, 2017 FOIA Request 2017-565 for all informal Open Internet/Net Neutrality complaints and provide a time frame for when these documents will be produced.

Moreover, I would like to bring to your attention the call I had with Mr. Hennigan the day before the first wave of production documents were due on June 19, 2017, where Mr. Hennigan said he could either send me the “data” and samples, or withhold the data and start producing all informal complaints. I pressed him on why this would be a mutually exclusive request, and did not receive a satisfying response. At this point in our conversation, I was very concerned that altering my request would further delay production and it was important to see what documents Mr. Hennigan had already gathered.

Mr. Hennigan and I had spoken the week prior on June 12, 2017 and had left a few things unresolved. In that earlier call, Mr. Hennigan explained that the search for relevant documents under request 3 for documents from the ombudsperson in FOIA 2017-565 produced “a lot, a lot of documents” and that he had yet to start processing them. Mr. Hennigan said that Michael Janson had sent over thousands of responsive documents, which must first be printed and then scanned back into the Adobe redaction software. He also mentioned he received documents from Parul Desai responsive to this request, but did not specify any amount. Mr. Hennigan said such documents would have to be produced on a rolling basis, and did not give me any estimate for a completion date to this request. I did subsequently follow-up regarding an estimate on Friday June 23, 2017 and Mr. Hennigan said he was unable to provide such estimate, but that I should start seeing documents as early as this week.

Also, on our call on June 12, 2017, Mr. Hennigan mentioned that Mr. Janson had alerted him to a prior FOIA Request from June 2016 with approximately 20,000 documents responsive to my FOIA Request for informal Open Internet/Net Neutrality complaints. Mr. Hennigan said he would look to verify these documents, and asked whether I would be interested. I answered in the affirmative and asked that he please let me know as soon as he verified that these 20,000 or so documents were responsive. Based from this conversation I understood these documents to be informal complaints relating to Open Internet issues that had already been redacted, and therefore could be easily produced as responsive to my request. I did not receive any follow-up emails or calls from Mr. Hennigan, which is what led to our call on June 19, 2017.

When I spoke to Mr. Hennigan on June 19, 2017 again about the 20,000 documents he told me he had in fact “looked into it” and that Mr. Janson was “mistaken” and that the documents were not responsive. I asked if Mr. Hennigan could provide me with the frame of the original FOIA request so I could verify this, but he was unable to do so. Mr. Hennigan then mentioned there were 639 emails that may be responsive from a previous request- he asked whether I would like those documents, and again I answered in the affirmative. I have yet to see those emails and would like a further investigation into the 20,000 documents that Mr. Janson flagged as responsive.

Finally, the documents requested from the FCC in response FOIA Request 2017-565 are pertinent to an open proceeding. Such documents are critical for the National Hispanic Media Coalition and other members of the public to comments on proposals set forth in the *Restoring Internet Freedom* Notice of Proposed Rulemaking WC Docket No. 17-108.

To summarize, I request that:

1. The FCC FOIA Office honor the May 1, 2017 FOIA Request 2017-565 for all informal Open Internet/Net Neutrality complaints and provide a time frame for when these documents will be produced.
2. The FCC FOIA Office provide an estimate for the completion date for the rolling production for documents responsive to Request #3 in 2017-565 regarding the role of the ombudsperson.
3. A further investigation into the 20,000 documents that Mr. Janson flagged as responsive to my request for informal Open Internet/Net Neutrality complaints based on a prior request submitted to the FCC in June 2016.
4. A clarification of the 639 responsive emails that Mr. Hennigan mentioned during our call on June 19, 2017 and an estimated time for production.

Thank you for taking the time to review this request. I look forward to your response and would also like to discuss next steps with you in further detail later this afternoon.

June 26, 2017

NHMC FOIA Request 2017-565

Respectfully,

Carmen Scurato, Esq.
Director, Policy & Legal Affairs
National Hispanic Media Coalition
718 7th Street NW
Washington, DC 20001
(202) 596-8997
cscurato@nhmc.org

ATTACHMENT 5

From: Mike Hennigan Mike.Hennigan@fcc.gov
Subject: FOIAs 2017-565, 577, 638, & 639 (Open Internet Complaints)
Date: July 14, 2017 at 4:35 PM
To: Carmen Scurato cscurato@nhmc.org
Cc: Nancy Stevenson Nancy.Stevenson@fcc.gov, Ryan Yates Ryan.Yates@fcc.gov

Hello Ms. Scurato, this is a follow-up to our telephone conversation on July 5, 2017, regarding your requests for complaints and carrier responses related to the "2015 Open Internet Order." As you are aware, our search located approximately 47,000 documents which included various keyword searches (i.e., speed, billing, blocking, throttling, etc.) and approximately 18,000 carrier responses.

As previously discussed, your request would have the Commission provide you with over 65,000 documents (47,000 complaints plus 18,000 carrier responses). This would require a vast amount of resources for CGB to process, as each document would need to be individually reviewed to redact any personally identifiable information contained therein. CGB staff initially estimate that processing such a request would require over 2,000 staff hours. Also, extracting all these records would tremendously impact the operation of the Zendesk database, and the ability of Zendesk to process incoming complaints and any subsequent responses from CGB would be hindered. For these reasons, your FOIA request for all complaints and carrier responses related to the Open Internet Order would place an unreasonable burden upon the agency.

Therefore, in an attempt to narrow the scope of your requests, we are offering you an additional 2,000 sample complaints related to your requests, along with the carrier responses (approximately 900 pages), approximately 1,500 emails, and Excel spreadsheets with all approximately 47,000 complaint numbers and the additional data fields you requested. If you agree to this offer, we anticipate we can provide the additional documents to you by September 1, 2017.

Please respond to this offer by close of business on July 28, 2017, advising us of your willingness to narrow the scope of your requests as outlined above. If we do not hear back from you by the due date, we will assume that you decline the Commission's offer to narrow the request.

Sincerely,

Mike Hennigan
Consumer Policy Division
Consumer & Governmental Affairs Bureau
202-418-2869

ATTACHMENT 6



National Hispanic
Media Coalition

Submitted via Email
Mike.Hennigan@fcc.gov
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

July 27, 2017

RESPONSE TO OFFER RE: NHMC FOIA REQUEST FCC 2017-565

Dear Mr. Hennigan,

Please consider this NHMC's response to your email from July 14, 2017, and the follow-up email from July 18, 2017. After careful consideration, we are willing to accept your offer as it relates to the 1,500 ombudsperson documents, but cannot accept the offer to provide only 2,000 of the more than 47,000 consumer complaints that are responsive to our request, because we still have several concerns about narrowing the request as it relates to the current Internet rulemaking proceeding, WC Docket No. 17-108 ("*Internet NPRM*").

First, we accept the offer for the ombudsperson documents because these documents are responsive to part 3 of NHMC's Freedom of Information Act request FCC-2017-565 submitted on May 1, 2017. However, your offer states that we will receive all 1,500 emails from ombudsperson(s) Parul Desai and Michael Janson by September 1, 2017. This date is five months after the date of our FOIA request, and it remains unclear what has caused such an unnecessary delay in production. Further, these documents are directly responsive to a question raised in the Commission's pending *Internet NPRM* proceeding, and your production deadline of September 1, 2017, is two weeks after the *Internet NPRM*'s reply comment deadline of August 16, 2017. We therefore ask that you provide documents to NHMC on a rolling basis throughout the month of August, with the final set of documents provided to NHMC no later than September 1, 2017.

Second, we cannot accept your offer to provide only an additional 2,000 consumer complaints, with 900 pages of carrier responses. There is a need for the Commission to release, and for the public to be able to review, all of the more than 47,000 open Internet complaints in order to protect the integrity of the record in the pending *Internet NPRM* proceeding. When NHMC submitted its FOIA requests last May, it was unaware of the Commission's failure to review its own open Internet complaint-related documents, a failure that is clearly apparent now. Therefore, we request that the Commission work to release the text of the more than 47,000 open Internet-related complaints and the data related to those complaints, not only to NHMC, but also, in the interests of transparency and a complete record in the *Internet NPRM* proceeding, to the

remainder of the public. Simply put, it should not take a FOIA request for the Commission to release to the public for review and comment Commission records that directly relate to issues the Commission itself has chosen to raise in the pending *Internet NPRM* proceeding. This situation is only further exacerbated by the facts that the Commission holds this information in its exclusive possession, failed even to acknowledge its existence in the *Internet NPRM*, and has apparently yet to conduct any analysis of these documents.

Third, we would accept the spreadsheet with data for the more than 47,000 consumer complaints, as this would capture the entire universe of complaints. Given Stephanie Kost's original proposed production date of July 19, 2017 for this material, we should be confident in assuming that this data will be produced to NHMC well before the September 1, 2017 production deadline. Please let me know if my confidence is misplaced.

Fourth, we still request that you produce the 308 carrier responses that relate to the initial production of 1,000 consumer complaints. We also want to emphasize that several of these complaints reference attachments uploaded by consumers, and we request that those attachments be produced as well.

Finally, by accepting the documents as described and on the time schedule set forth above, NHMC does not waive any of its rights to appeal this FOIA production or its rights to request further responsive documents from the Commission. We remain deeply concerned that the Commission has failed to adequately address the more than 47,000 open Internet-related complaints and their impact on the issues raised and the accuracy of some of the tentative conclusions reached in the *Internet NPRM*. We are likewise troubled that the Commission continues to move forward with a proceeding to repeal open Internet rules established in 2015 without analyzing, or allowing the public to analyze, information that is critical to assessing the benefits of, and the need to preserve those rules.

We look forward to your prompt response in writing.

Respectfully,

Carmen Scurato, Esq.
Director, Policy & Legal Affairs
National Hispanic Media Coalition
718 7th Street NW
Washington, DC 20001
(202) 596-8997
cscurato@nhmc.org

From: Carmen Scurato cscurato@nhmc.org
Subject: Follow-up on NHMC's FOIA Request
Date: August 21, 2017 at 7:28 AM
To: kristine.fargotstein@fcc.gov
Cc: Ryan Yates ryan.yates@fcc.gov
Bcc: Gloria Tristani gtristani@nhmc.org, Francella Ochillo fochillo@nhmc.org

Hi Kristine,

Thank you for reaching out to me this past Friday. I wanted to circle back on something we discussed over the phone, mainly the 18,000 carrier responses that correspond with the 47,000+ open internet consumer complaints. I am attaching the email from Mike Hennigan that provided us with this number and confirming that this was part of NHMC's May 1, 2017 FOIA request: "As previously discussed, your request would have the Commission provide you with over 65,000 documents (47,000 complaints plus 18,000 carrier responses)." This number was also mentioned on a few calls as well.

The May 1, 2017 FOIA request asked for several data points, as well as any attachments uploaded by the consumer, and the resolution of those complaints, including the carrier/provider response letters. The request asked for these documents because it is necessary to understand not only the basis of the consumers' complaints, but also how the complaints were resolved by the carriers - and whether any consumers challenged the carrier's response.

Mike Hennigan did not provide a tally of the amount of possible attachments - but I flagged that a few of the 1,000 complaints he provided on June 21 had references/placeholders for attachments.

I would appreciate if you could confirm that now that we are moving forward with all 47,000+ consumer complaints, that we will be receiving any attachments uploaded by consumers, corresponding carrier responses, and any consumer responses to the carriers. I'm looking forward to your response.

Best,
Carmen

From: Mike Hennigan Mike.Hennigan@fcc.gov
Subject: FOIAs 2017-565, 577, 638, & 639 (Open Internet Complaints)
Date: July 14, 2017 at 4:35 PM
To: Carmen Scurato cscurato@nhmc.org
Cc: Nancy Stevenson Nancy.Stevenson@fcc.gov, Ryan Yates Ryan.Yates@fcc.gov

Hello Ms. Scurato, this is a follow-up to our telephone conversation on July 5, 2017, regarding your requests for complaints and carrier responses related to the "2015 Open Internet Order." As you are aware, our search located approximately 47,000 documents which included various keyword searches (i.e., speed, billing, blocking, throttling, etc.) and approximately 18,000 carrier responses.

As previously discussed, your request would have the Commission provide you with over 65,000 documents (47,000 complaints plus 18,000 carrier responses). This would require a vast amount of resources for CGB to process, as each document would need to be individually reviewed to redact any personally identifiable information contained therein. CGB staff initially estimate that processing such a request would require over 2,000 staff hours. Also, extracting all these records would tremendously impact the operation of the Zendesk database, and the ability of Zendesk to process incoming complaints and any subsequent responses from CGB would be hindered. For these reasons, your FOIA request for all complaints and carrier responses related to the Open Internet Order would place an unreasonable burden upon the agency.

Therefore, in an attempt to narrow the scope of your requests, we are offering you an additional 2,000 sample complaints related to your requests, along with the carrier responses (approximately 900 pages), approximately 1,500 emails, and Excel spreadsheets with all approximately 47,000 complaint numbers and the additional data fields you requested. If you agree to this offer, we anticipate we can provide the additional documents to you by September 1, 2017.

Please respond to this offer by close of business on July 28, 2017, advising us of your willingness to narrow the scope of your requests as outlined above. If we do not hear back from you by the

due date, we will assume that you decline the Commission's offer to narrow the request.

Sincerely,

Mike Hennigan
Consumer Policy Division
Consumer & Governmental Affairs Bureau
202-418-2869

Carmen Scurato / Director, Policy & Legal Affairs
cscurato@nhmc.org / (202) 596-8997 / Washington, DC